FILED
AUG 14 1950
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1950

No. 249

J. DONALD HALSTED, E. M. NICHOLS AND B. F. GRIZZLE AS A PROTECTIVE COMMITTEE FOR THE HOLDERS OF THE COMMON STOCK OF LONG ISLAND LIGHTING COMPANY,
Petitioners,

against

SECURITIES AND EXCHANGE COMMISSION,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA, AND BRIEF IN SUPPORT OF PETITION

HAROLD G. ARON,
LYNNE A. WARREN,
CHARLES B. MCGRODDY, JR.,
FRANKLIN C. SALISBURY,
Attorneys for Petitioners,
39 Broadway,
N. Y. 6, N. Y.

Dated: August , 1950.

APPEAL PRINTING CO., INC., 130 CEDAR STREET, NEW YORK, WO 4-3033

INDEX

PAGE

PETITION: 1

Opinions Below 2

Jurisdiction 2

Constitutional Provisions and Statutes Involved..... 2

Statement 2

Questions Presented 5

Reasons Relied on for Allowance of the Writ..... 6

Prayer 7

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI: 9

Applicable Sections of the Public Utility Holding Company Act of 1935 11

POINT I—A statute authorizing an administrative body to regulate the solicitation of

> "any proxy, power of attorney, consent or authorization regarding any security of a registered holding company, or subsidiary company thereof"

does not empower that body to prohibit a solicitation for voluntary contribution of funds by a duly authorized stockholders' protective committee.... 12

POINT II—The restriction imposed violated the First Amendment to the Constitution of the United States 16

POINT III—Even if the Commission has the power to regulate solicitation of voluntary contributions, its denial of permission to solicit in this case was arbitrary and capricious 18

PAGE

POINT IV—If applied to a public utility holding company and its subsidiaries which are all organized, operated and located, within a single state, or to a protective committee for stockholders of such a holding company, the Act would be unconstitutional 19

CONCLUSION 21

Cases

In the Matter of Long Island Lighting Company, 89 Fed. Supp. 513, 518 (U.S.D.C., E.D.N.Y.) aff'd., 2nd Circuit, July 5, 1950, unreported 15, 19

In Re Kings County Lighting Co., 72 Fed. Supp. 767 (affirmed, sub. nom. Public Service Commission of New York *v.* Securities and Exchange Commission, 166 Fed. 2nd 784, 788; cert. den. 1948, 334 U. S. 838.. 19

Thomas V. Collins, 323 U. S. 516, 531 16-17

Constitutional Provisions and Statutes

United States Constitution, First Amendment..... 2, 17

Judicial Code (28 U.S.C.A. §1254) Sect. 1254..... 2

Public Utility Holding Company Act of 1935 (15 U.S.C.A. Sect. 79(a) et seq.)

Sect. 1(a) 19
Sect. 1(b) 2, 19
Sect. 1(c) 2, 19, 20
Sect. 3(a) 2, 20
Sect. 11 3
Sect. 11(f) 2, 11
Sect. 12(e) 2, 4, 5, 11, 12, 13, 14
Sect. 24(a) 2

Rule U-62, Rules of Securities & Exchange Commission 3

Supreme Court of the United States

OCTOBER TERM, 1950

No. .....

J. DONALD HALSTED, E. M. NICHOLS and B. F. GRIZZLE as a Protective Committee for the Holders of the Common Stock of Long Island Lighting Company,

Petitioners,

against

SECURITIES AND EXCHANGE COMMISSION,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

To the Honorable the Chief Justice, and the Associate Justices of the Supreme Court of the United States:

J. Donald Halsted, E. M. Nichols and B. F. Grizzle as a Protective Committee of the Holders of the Common Stock of Long Island Lighting Company respectfully pray that a writ of certiorari issue to review the decision and judgment of the United States Court of Appeals for the District of Columbia which affirmed an order of the Securities and Exchange Commission denying the Committee the right to solicit voluntary contributions from the common stockholders of Long Island Lighting Company in order to defray the expenses of the Committee's activities

in the proceedings then pending before the Securities and Exchange Commission and the Public Service Commission of the State of New York, for the reorganization of Long Island Lighting Company.

Opinions Below

The Findings and Opinion of the Securities and Exchange Commission dated April 1, 1949, are printed in this Record at pages 97-105. The opinion of the United States Court of Appeals for the District of Columbia dated April 24, 1950 (unreported) is attached to the printed Record as an addition (Record, p. 108).

A certified transcript of the Record before the Court of Appeals and the proceedings in said Court, is presented herewith pursuant to Rule 38 of this Court.

Jurisdiction

This application is made under Section 1254 of the Judicial Code (28 U.S.C.A. 1254).

The jurisdiction of this Court is invoked under Section 24(a) of the Public Utility Holding Company Act of 1935, 49 Stat. 834, 15 U.S.C.A. §79x(a).

Constitutional Provisions and Statutes Involved

First amendment to the Constitution of the United States, and Public Utility Holding Company Act of 1935, 49 Stat. 834, 15 U.S.C.A. Sect. 79a *et seq.* §1, 3, 11(f) and 12(e).

Statement

Petitioners are a duly authorized Protective Committee for the holders of common stock of Long Island Lighting Company (hereinafter called "Long Island"), a public

utility corporation organized under the laws of the State of New York, which, with its subsidiaries, manufactures and sells electric power and gas to customers within certain counties of the State of New York, located on Long Island.

On May 21, 1948 petitioners filed with the Securities and Exchange Commission (hereinafter called "the Commission") a declaration (Record, p. 11-27) pursuant to Rule U-62 of the Commission, seeking leave to solicit authorizations to represent Long Island's common stockholders in proceedings pending since November 9, 1945 under Section 11 of the Public Utility Holding Company Act of 1935 for the reorganization of Long Island and its subsidiaries. After the filing of three amendments (Record, p. 28, 30, 31) the declaration was permitted to become effective (Record, p. 33).

The solicitation was made, and on October 20, 1948 the Committee had been authorized to represent more than two thousand holders of over 788,000 shares of Long Island common, out of 3,000,000 shares of that Company issued and outstanding (Record, p. 34).

Under the Plan of Reorganization then proposed, all rights of the holders of Long Island common were to be terminated upon payment to them of $.35 per share out of future income (Record, p. 30). The authorizations sought and received by the Committee empowered it to represent the common stockholders by opposing that Plan and any other plan which failed to give the holders of Long Island common substantial participation in the reorganized Company in the form of new stock, and by striving for speedy adoption of a fair and equitable plan of reorganization for Long Island and its subsidiaries (Record, p. 20, 21). The declaration contained the following sentence:

> "The Committee does not presently contemplate making any request for voluntary contributions from stockholders, but even if such solicitations should subsequently be deemed advisable, any contributions on your part would be entirely voluntary." (Record, p. 24)

On October 28, 1948 petitioners filed Post-Effective Amendment No. 2 (Record, p. 34-37) and Exhibit B thereto (Record, p. 39-45) seeking leave to solicit Long Island common stockholders for a voluntary contribution of $.05 per share held by them in order to set up a defense fund, to repay loans which the committee had obtained, to defray its expenses, to pay travelling expenses, a fee to engineers for services rendered and to be rendered, a retainer to counsel and the expense of contemplated litigation (Record, p. 42-43). Provision was made for the repayment of these contributions out of the fees and expenses to be allowed at the end of the proceeding (Record, p. 44).

After a hearing before the Commission on November 12, 1948, the Commission issued its Findings and Opinion on January 5, 1949 (Record, p. 97-105) denying leave to solicit such voluntary contributions.

The Commission found that it had jurisdiction under Section 12 (e) of the Public Utility Holding Company Act of 1935 which provides as follows:

> "It shall be unlawful for any person to solicit or to permit the use of his or its name to solicit, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, any proxy, power of attorney, consent or authorization regarding any security of a registered holding company or a subsidiary company thereof in contravention of such rules and regulations or orders as the Commission

> deems necessary or appropriate in the public interest or for the protection of investors or consumers or to prevent the circumvention of the provisions of this title or the rules, regulations, or orders thereunder."

The Commission held that

> "The solicitation here proposed clearly constitutes the solicitation of an authorization regarding a security within the meaning of Section 12 (e)." (Record, p. 102)

An appeal was then taken to the United States Court of Appeals for the District of Columbia, which was argued on January 10, 1950. On April 26, 1950, the Court of Appeals rendered an opinion (Record, p. 108) affirming the order of the Commission by a divided Court.

Petitioners are currently filing an application for a writ of certiorari asking this Court to review and reverse the order of the Court of Appeals for the Second Circuit affirming an order of the United States District Court for the Eastern District of New York approving and enforcing a plan of reorganization for Long Island and its subsidiaries, and by stipulation in that proceeding the plan will not be consummated prior to this Court's action on that application. In that application petitioners are urging that the prohibition of solicitation prevented a fair trial.

Questions Presented

1. Has the Commission power under the Public Utility Holding Company Act of 1935 to prohibit the Committee from soliciting voluntary contributions from the common stockholders to defray the committee's expenses of proceedings:

(a) then pending before the Commission,

(b) then pending before the Public Service Commission of the State of New York,

(c) contemplated before courts?

2. If the Commission has the power to prohibit such solicitations, was the prohibition in this case arbitrary and capricious?

3. Did the Commission have jurisdiction over the reorganization of Long Island and its subsidiaries and the activities of the Committee?

Reasons Relied on for Allowance of the Writ

1. This is the first case presenting the question of the power of the Commission to prohibit a protective committee from seeking the cooperation of the stockholders it represents in their common defense, by raising funds to pay the committee's expenses and retainers to and the expenses of experts and counsel not only in the proceedings before the Commission, but in proceedings pending before another body, and proceedings contemplated before courts. This prohibition upon stockholders' cooperation in defense of their interests imposed by the Commission without any explicit statutory authorization presents a question of wide general importance, involving civil rights in the economic field, which has not been, but should be, determined by this Honorable Court.

2. This, together with the companion application above referred to, is the first case brought by a damaged security holder, presenting a challenge to the constitutionality of the Public Utility Holding Company Act of 1935, if it be construed as applying to a holding company, which is also an operating company, and its operating subsidiaries

which are wholly intra-state in their location and operations, and whose sole impingement upon inter-state commerce arises from the fact that their securities are owned by residents of various states, and are the subject of trading upon a national exchange.

3. This case presents a question of abridgement by an administrative agency of stockholders' rights of free speech, and a prohibition upon such stockholders forbidding them from voluntary cooperation in their defense, not only before that body, but before other bodies. This is an evil as great in the economic field, as the evil in the sociological field when individuals or groups are hindered or prevented from making proper defense against criminal charges.

Prayer

Wherefore, for the reasons stated above and more fully set out in the annexed brief, petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the United States Court of Appeals for the District of Columbia, commanding the Court (or if a certified copy of its decision and order has gone down to the Securities and Exchange Commission commanding that body) to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of its record and proceedings in the case in said United States Court of Appeals for the District of Columbia, and that the decision of the United States Court of Appeals for the District of Columbia, affirming the order of the Securities and Exchange Commission, be reversed by this Honorable Court, and that petitioners have such other and

further relief in the premises as to this Honorable Court may seem just and proper.

Respectfully submitted,

HAROLD G. ARON,
LYNNE A. WARREN,
CHARLES B. MCGRODDY, JR.,
FRANKLIN C. SALISBURY,
Attorneys for Petitioners.

Dated: August , 1950.

Supreme Court of the United States

OCTOBER TERM, 1950

No. .....

J. DONALD HALSTED, E. M. NICHOLS and B. F. GRIZZLE as a Protective Committee for the Holders of the Common Stock of Long Island Lighting Company,

Petitioners,

against

SECURITIES AND EXCHANGE COMMISSION,

Respondent.

BRIEF OF COMMON STOCKHOLDERS' PROTECTIVE COMMITTEE IN SUPPORT OF PETITION FOR CERTIORARI

This application presents a civil rights question in the economic field, involving the propriety of a severe restriction which the Commission placed on a Committee defending the economic interests of common stockholders. The restriction was actual, practical and effective, for it required the Committee to conduct the defense of the stockholders without ability to raise funds by voluntary refundable contributions which would be used to pay the expenses of Committee, engineers, experts and counsel. The attack on the stockholders' interests was spearheaded by engineers, experts and counsel on the payroll of the Company, whose shares the stockholders held. The proceedings in which the Committee was then engaged were

pending not only before the Commission, but also before the Public Service Commission of the State of New York, and litigation in the Courts was contemplated. The position of the Commission and the Court below was that the restriction upon the Committee's freedom to defend the common stockholders was designed to protect the common stockholders, and that the restriction did not, in fact, hinder them in their defense.

This restriction, concededly not explicitly authorized by any statute, presents a question of general interest to all protective committees and stockholders, for if it is sustained, there may be no general solicitation of voluntary contributions by such committees to finance stockholder defense, before the Commission, or before any other body, without Commission approval. The existence and exercise of the power to restrict defense so effectively, should not be implied from a statute silent with respect to its existence, without review by this Honorable Court, especially when the power to restrict defense is claimed to reside in a body before which defense must be conducted, and where the scope of that restriction extends to defenses before other bodies. Thus the question presented is of grave importance to every public utility holding company stockholder and to every protective committee, for such stockholders, whether *in esse* or *in potentia.*

This civil rights question in the economic field involves a question of statutory construction calling into play the Court's conception of the scope of an administrative body's implied power to impose restriction upon acts performed in defense of economic interests.

The question is not only of wide public importance, but also completely novel, and research has failed to discover any exact precedent.

Applicable Sections of the Public Utility Holding Company Act of 1935

The sections of the Public Utility Holding Company Act of 1935 (hereinafter called "the Act"), involved are as follows:

Section 12(e):

> "It shall be unlawful for any person to solicit, or to permit the use of his or its name to solicit, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, any proxy, power of attorney, consent or authorization regarding any security of a registered holding company or a subsidiary company thereof in contravention of such rules and regulations or orders as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or to prevent the circumvention of the provisions of this chapter or the rules, regulations or orders thereunder." (15 U.S.C. §79 l(e))

A portion of Section 11(f) provides as follows:

> "The Commission may, by such rules and regulations or order as it may deem necessary or appropriate in the public interest or for the protection of investors or consumers, require that any or all fees, expenses and remunerations, to whomsoever paid, in connection with any reorganization, dissolution, liquidation, bankruptcy, or receivership of a registered holding company or subsidiary company thereof, in any such proceedings, shall be subject to approval by the Commission." (15 U.S.C. §79 k(f)):

POINT I

A statute authorizing an administrative body to regulate the solicitation of

> **"any proxy, power of attorney, consent or authorization regarding any security of a registered holding company, or subsidiary company thereof"**

does not empower that body to prohibit a solicitation for voluntary contribution of funds by a duly authorized stockholders' protective committee.

It is clear that what Congress sought to do by Section 12(e) was to regulate the attempts of those who do not own the security of the registered holding company to obtain from the owner some or all of his rights as such.

Under this point the question is whether the provisions of Section 12(e) making it unlawful to solicit

> "any proxy, power of attorney, consent or authorization regarding any security of a registered holding company or a subsidiary company thereof"

in contravention of the rules and regulations or orders of the Commission, empower the Commission to prohibit solicitation of voluntary contributions to a defense fund. In order to read this power into the statute, we must expand the meaning of the terms "proxy, power of attorney, consent or authorization regarding any security" to include "voluntary contribution of funds."

The Commission devised the following expansion process to accomplish that result:

> "The solicitation here proposed clearly constitutes the solicitation of an authorization regarding a se-

curity within the meaning of Section 12(e). Its admitted purpose is to secure from holders of common stock an advance of funds to be used to carry out the Committee's stated objectives to protect the rights attaching to such stock in the proceedings affecting Long Island. The solicitation of those funds is necessarily a solicitation of authority to use the funds in a representative capacity to carry out the stated objectives of security holder protection. The advancement of money to the Committee would amount to a more effective grant of authority to act with respect to the stock than any revocable formal authorization. Having contributed, a stockholder would be implementing the Committee's function regardless of any change in the nature of the contributor's interest or viewpoint." (Record, p. 102)

Even were this tortuous course of sophistry to be accepted, as far as it goes, it goes only so far as to purport to show that the solicitation was of an authorization "to use the funds" and not an authorization "regarding any security" which the statute is designed to regulate.

The Court of Appeals had the same difficulty with this point and got no further with it. It held that

> "* * * the proposed action in circularizing stockholders amounted to soliciting an 'authorization' within the meaning of Section 12 (e) * * *." (Opinion of Court of Appeals, Record, p. 111)

but the Court never even came to the point of showing how the proposed action was the solicitation of an authorization "regarding any security which is the limiting phrase of the statute.

The dissenting opinion in the Court of Appeals written by Judge Miller agrees with our argument in the following words:

> "If Congress had intended to authorize administrative prohibition against solicitation of voluntary contributions from stockholders by a committee already lawfully designated by them by proxy, power of attorney, consent, or authorization, it could easily have said so. Had it so intended, I am sure Congress would not have been content to describe a voluntary contribution to the expense fund of a lawful agent as a 'proxy, power of attorney, consent, or authorization regarding' a security. It would have found and used terms or words more aptly expressive of its intention. So I conclude that §12(e) of the Act does not support the Court's decision." (Record, p. 121)

Neither Commission nor Court stated, either directly or impliedly, that after solicitation or receipt of funds, the Committee would have any wider scope of authority "regarding any security of a registered holding company" (§12(e) of the Act) than before, although both conceded that the receipt of funds

> "would be implementing the Committee's function" (Commission's Findings and Opinion, Record, p. 102)

i.e. would enable the Committee to do effectively what it had already been authorized to do. As the Court of Appeals itself said in its opinion

> "It cannot be questioned that a contribution of funds could well make any prior right of representation more potent and effective." (Record, p. 112)

And shortly thereafter the Court finds that

> "Nor is there any indication that its (the Committee's) activities have in fact been limited by reason of the Commission's order." (Record, p. 112)

Here we have Commission and Court in one breath saying that contributions of funds would be "implementing the committee's function" and "making it more potent and effective" while the Court finds that "the committee's activities have not been limited" by lack of funds.

When the Committee seeks to solicit funds, it is refused because funds would aid it and make it more "potent and effective;" when the Committee charges that the refusal of permission to solicit made it less potent and effective, it is met with a finding that its activities have not been limited by lack of funds.

The lack of funds did in fact deprive the Committee of the assistance of accountants and engineers. It made it impossible for the Committee and its counsel to purchase and have available for study a stenographic transcript of the proceedings. It deprived the Committee and its counsel of the ability to have an independent engineering and accounting study made of a controverted item of over $10,000,000 of alleged deficiency in depreciation reserves, of which the Court of Appeals for the Second Circuit wrote, in approving the Plan of Reorganization for Long Island.

> "no one had proved the figure wrong" (In the Matter of Long Island Lighting Company, United States Court of Appeals, 2nd Ct., July 5, 1950, unreported)

Without accountants and engineers, the Committee had no opportunity to prove the figure wrong.

In all the discussion of the abuses which led to statutory regulation of protective committees, there is no word spoken, no case found and no showing made of any abuses arising out of voluntary contributions by security holders to protective committees. The reason for this is, as this Court well knows, that the voluntary contribution method

was not generally used by protective committees to raise funds in the period before statutory control was established. The voluntary contribution method is the only feasible and practical method of placing the representatives of large numbers of scattered stockholders in a status even approaching equality with the representatives of management well fortified with current payments out of corporate funds. Moreover, the Court will note that the supervisory power which the Committee was willing to let the Commission exercise over the defense fund (Record, pp. 43-44) obviated all possibility of any abuse.

POINT II

The restriction imposed violated the First Amendment to the Constitution of the United States.

The Court of Appeals disposed of this contention as follows:

> "Were the committee engaged in forwarding a religious, political or social cause by soliciting funds from proselytes or from the public generally, its case for freedom from supervision and restraint would indeed be strong." (Record, p. 117)

In *Thomas* v. *Collins,* 323 U.S. 516, this Court wrote at page 531:

> "The grievances for redress of which the right of petition was insured, and with it the right of assembly, are not solely religious or political ones. And the rights of free speech and a free press are not confined to any field of human interest.
>
> The idea is not sound therefore that the First Amendment's safeguards are wholly inapplicable to

> business or economic activity. And it does not resolve where the line shall be drawn in a particular case merely to urge, as Texas does, that an organization for which the rights of free speech and free assembly are claimed is one 'engaged in business activities' or that the individual who leads it in exercising these rights receives compensation for doing so."

In the absence of any showing of abuse, false statements or danger or likelihood of either of them, this prohibition of solicitation of voluntary contributions, to be used, with the approval of the Commission, to employ and pay experts, accountants, engineers, and counsel, violates the Constitutional provision that

> "Congress shall make no law * * * abridging the freedom of speech or of the press or the right of the people peaceably to petition the Government for a redress of grievances." (First Amendment to United States Constitution)

Under this point, we do not contend, of course, that *Thomas* v. *Collins* (*supra*) resolves "where the line shall be drawn" in this case. We do contend that the absolute prohibition which the Commission here imposed, draws too circumscribed a line around the area of constitutionally protected liberties in the field of defense of economic interest, especially in the absence of explicit statutory authorization.

POINT III

Even if the Commission has the power to regulate solicitation of voluntary contributions, its denial of permission to solicit in this case was arbitrary and capricious.

In cases like the present, where the plan proposes to wipe out the securities involved for a pittance of $.35 per share, it is a practical impossibility to obtain the services of accountants and engineers on a contingent basis. Moreover, so long as no false or misleading statements are made, so long as security holders are kept fully advised of the use to which the funds are put, why should their freedom and the freedom of their representatives to finance their defense by voluntary contributions, be taken away, without any showing of past or present abuse? Regulated, perhaps, it may be, but not destroyed.

In principle, logic and actuality, nothing could be more arbitrary or capricious than the requirement that the Common Stockholders Committee be forced to litigate on a credit and contingency basis, even with respect to actual, necessary, out-of-pocket disbursements, while management, their chief opponent, litigates on a cash basis, using funds in which stockholders have an equitable interest, in the attempt to destroy or diminish that interest.

This is even more than depriving the stockholders of their power of defense; it is also making them bear the expense of accomplishing their own injury or destruction.

POINT IV

If applied to a public utility holding company and its subsidiaries which are all organized, operated and located, within a single state, or to a protective committee for stockholders of such a holding company, the Act would be unconstitutional.

This point was raised and determined against us by the United States District Court for the Eastern District of New York in the main reorganization proceedings wherein that Court wrote, in approving the Plan of Reorganization:

> "The answer here as in the Kings County Lighting case is that interstate distribution of securities is a sufficient constitutional basis for federal legislation * * *." (In re Long Island Lighting Co. et al., 89 F. Supp. 513, 518.)

A somewhat similar point was unsuccessfully urged by the Public Service Commission of the State of New York in *In Re Kings County Lighting Co.*, 72 F. Supp. 767, affirmed *sub nom. Public Service Commission of New York* v. *Securities and Exchange Commission*, 2 Circ. 1948, 166 F. 2nd 784, 788; cert. den. 1948, 334 U. S. 838.

Now however, the point is raised, not by a state administrative body, but by injured security holders.

Section 1(a) of the Act recites that "Public Utility Holding companies and their subsidiary companies are affected with a national public interest * * *," and Subdivision (b) recites certain evils found among them. Subdivision (c) sets out the policy of the Act designed to end such evils and provides as follows:

> "When abuses of the character above enumerated become persistent and wide-spread the holding com-

> pany becomes an agency which, unless regulated, is injurious to investors, consumers, and the general public; and it is hereby declared to be the policy of this title, in accordance with which policy all the provisions of this title shall be interpreted, to meet the problems and eliminate the evils as enumerated in this section, connected with public-utility holding companies which are engaged in interstate commerce or in activities which directly effect or burden interstate commerce; and for the purpose of effectuating such policy to compel the simplification of public-utility holding company systems and the elimination therefrom of properties detrimental to the proper functioning of such system, and to provide as soon as practicable for the elimination of public-utility holding companies, except as otherwise expressly provided in this title."

The Act was not intended to be applied to holding companies if

> "such holding company, and every subsidiary company thereof which is a public-utility company from which such holding company derives, directly or indirectly, any material part of its income are predominantly intrastate in character and carry on their business substantially in a single State in which such holding company and every such subsidiary company thereof are organized;" (Sect. 3(a))

for Section 3(a) of the Act directs that the Commission shall exempt such companies from the Act "unless and except insofar as it finds the exemption detrimental to the public interest or the interest of investors or consumers."

For a company to be predominantly intrastate in character, it must have other, *i.e.* interstate, characteristics, which are those over which the intrastate characteristics

predominate. It is these other characteristics, which give rise to jurisdiction under the Act and requires the exemption. These other characteristics are absent in this case, and being absent, prevent jurisdiction from arising, unless mere ownership of securities, by residents of several states, and the existence of interstate commerce consisting of purchases and sales by such owners, is a sufficient interstate characteristic upon which Federal jurisdiction may be sustained.

This identical point is more fully briefed in the companion application for a writ of certiorari filed by these same petitioners, seeking review of an order of the United States Court of Appeals for the Second Circuit, which affirmed a District Court order approving a plan of reorganization for Long Island.

CONCLUSION

A writ of certiorari should be granted in response to the foregoing petition.

Respectfully submitted,

HAROLD G. ARON,
LYNNE A. WARREN,
CHARLES B. MCGRODDY, JR.,
FRANKLIN C. SALISBURY,
Attorneys for Petitioners.

Dated: August , 1950.